

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESEE

February 20, 2003

IN RE:

**BELLSOUTH'S TARIFF TO INTRODUCE
WELCOMING REWARD PROGRAM**

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**DOCKET NO.
03-00060**

**TARIFF NO.
03-017**

**DISSENT OF DIRECTOR RON JONES
TO ORDER ALLOWING TARIFF TO GO INTO EFFECT**

The above-styled docket came before a panel of the Tennessee Regulatory Authority ("Authority") at an Authority Conference held on February 3, 2003. During the Conference, Chairman Kyle and Director Tate voted: (1) to allow the Tariff to Introduce Welcoming Reward Program filed by BellSouth Telecommunications Inc. ("BellSouth") to go into effect with one alteration and (2) to determine whether to convene a contested case at the next regularly scheduled Authority Conference on February 18, 2003. The majority filed an order memorializing these decisions on February 14, 2003.

The Authority received BellSouth's Tariff to Introduce Welcoming Reward Program on January 3, 2003.¹ The tariff as filed allows customers to purchase 1FB lines or the equivalent thereto and receive a \$100.00 credit per line. The applicable restrictions are as follows: (1) customers must enroll between February 3 and May 2, 2003; (2) the customer must be located in Rate Group 5; (3) the customer must sign a twelve (12) month contract; (4) the customer must be a new BellSouth customer; and (5) the customer's aggregate annual billing of BellSouth services

¹ BellSouth's filing was not accompanied by any cost support. Also, BellSouth filed a revision to the tariff on January 7, 2003 to add a contents page.

may not exceed \$36,000 at the time of enrollment. The tariff also includes termination liability for terminating the contract prior to the expiration of the contract term. Pursuant to the majority's decision, BellSouth may now offer the program as filed with the exception that a customer may terminate the agreement after ninety (90) days without incurring any termination charges.² The reasons given for this decision at the conference, but not in the *Order Allowing Tariff to Go Into Effect*, were that customers would receive lower rates³ and that the action is consistent with the Authority's decisions regarding the effectiveness of contract service arrangements ("CSAs").⁴ For the reasons stated herein, I respectfully dissent from the majority's decision.

The reasoning provided by the majority that the tariff should be permitted to go into effect because customers will immediately receive lower rates fails to consider the potential long-term harm of the effects of anti-competitive, illegal, or discriminatory behavior. When this proceeding reaches its conclusion, if this Authority were to find that the tariff was anti-competitive, discriminatory, or otherwise illegal, then it will be competition that has suffered. Ironically, it is long-term committed and enduring competition that ultimately will bring sustained lower rates to consumers as well as innovative services and technology, the object of the telecommunications services policy of the State of Tennessee.⁵ It is somewhat

² *Order Allowing Tariff to Go Into Effect*, p. 4 (Feb. 14, 2003).

³ Transcript of Proceedings, Feb. 3, 2003, pp. 73-74 (unsigned version) (Authority Conference, Docket No. 03-00060).

⁴ *Id.* at 97.

⁵ The telecommunications services policy is found in Tenn. Code Ann. § 65-1-123. This section states: The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

Tenn. Code Ann. § 65-4-123 (Supp. 2002).

understandable, however, how the attractiveness of implementing immediate discounts can obscure the necessity to finalize analyses *prior* to allowing discounts to take effect.

If the Authority were to determine that a contested case is warranted or, upon the conclusion of such a proceeding, ultimately find that the tariff is illegal, it is unlikely that the proverbial cat could be returned to the bag. By the time either decision could be rendered, customers will have already been induced to subscribe to BellSouth's service. Moreover, customers may have already received the credit or have a legitimate expectation based on the tariff and related contract that a credit is forthcoming. There is nothing the Authority will be able to do to mitigate these effects. In the event that the Authority finds the tariff to be illegal, the only remedy apparent at this time would be to relieve the customer of the twelve month term commitment and termination liability.⁶ This remedy alone would not, however, prompt the customer to seek competitive alternatives because the customer will continue to receive service from BellSouth at the tariff rate, which is the same rate paid under the Welcoming Reward Program.

I must also disagree with the assertion that the decision is justified because it is consistent with previous actions of this agency with regard to CSAs. The circumstances here are distinguishable from those surrounding CSAs. The tariff filed by BellSouth in this docket is different from CSAs in that CSAs are designed by the provider for a specific customer. The tariff at issue here describes a program designed to apply to a group of yet-to-be identified customers meeting certain specified criteria. The CSAs have been filed pursuant to this agency's special contract rule.⁷ This rule is an exception to the general tariffing requirement pursuant to

⁶ The majority's decision implements this remedy in part, but does not relieve the customer of the termination liability when the customer chooses to terminate within the first ninety (90) days of the term.

⁷ Tenn. R. & Regs. 1220-4-1-.07 (Rev. Nov. 2001).

which BellSouth filed the tariff at issue in this docket.⁸ Also, the CSAs were permitted to go into effect pending the resolution of an on-going rulemaking.⁹ There is no rulemaking related to this tariff.

Prior to the rejection of the proposed rules by the Attorney General in Docket No. 00-00702¹⁰ and the filing of the petition to convene a contested case by the Consumer Advocate in seventy (70) CSA dockets,¹¹ the Authority had a history of approving CSAs.¹² To the contrary, the Authority typically votes to suspend tariffs when the agency requires additional information or has yet to determine whether to convene a contested case. Most recently, a panel of the Authority comprised of Chairman Kyle and Directors Miller and Jones voted to suspend a tariff and directed BellSouth to file a written response to the complaints of potential intervenors within one week so that the panel could consider the complaints at the next conference.¹³

The positions of the various parties asserted in regard to this tariff and the CSAs are also distinguishable.¹⁴ When the Authority first voted to allow certain CSAs to go into effect pending the outcome of the rulemaking, the Consumer Advocate did not oppose this decision.¹⁵ In this

⁸ *Id.* 1220-4-1-.04.

⁹ *See In Re: Rulemaking Proceeding - Regulations for Term Arrangements for Telecommunications Services*, Docket No. 00-00702.

¹⁰ *See Id.*, Letter of Attorney General (May 31, 2002).

¹¹ *Id.*, *Complaint and Petition to Intervene* (Aug. 2, 2002) (referencing CSAs in Docket Nos. 02-00534, 536-545, 550-561, 571-580, 598-607, 614, 615, 627-632, 656-662, 669-680).

¹² For example, the Authority approved all the CSA appearing on the agendas for Authority Conferences on May 21, 2002; May 7, 2002; April 30, 2002; April 16, 2002; March 26, 2002; February 26, 2002; February 5, 2002; January 23, 2002; and January 8, 2002.

¹³ Transcript of Proceedings, Oct. 7, 2002, pp. 27-29 (Authority Conference, Docket No. 02-01073); *see also In re: BellSouth Telecommunications, Inc. Tariff to Introduce SWA Contract Tariff in the Access Services Tariff*, Docket No. 02-00740, *Order Suspending Tariff Thirty (30) Days* (Mar. 28, 2003) (a petition to suspend and to convene a contested case was filed the morning of the conference); *In re: BellSouth Telecommunications Inc. Tariff to Modify CCS7 Access Arrangement*, Docket No. 02-00024, *Order Suspending Tariff Sixty (60) Days* (Mar. 28, 2002) (suspended tariff to allow BellSouth additional time to respond to the issues raised in earlier filed petitions to suspend).

¹⁴ The use of the term "parties" should not be taken to mean that a contested case has been convened or that petitions to intervene have been granted in this docket. Nevertheless, for the purposes of this dissent "parties" includes BellSouth, the CLEC Coalition, and the Consumer Advocate. The CLEC Coalition consists of Access Integrated Networks, Inc., Cinergy Communications Company, Xspedius Corporation, and AT&T Communications of the South Central States, Inc.

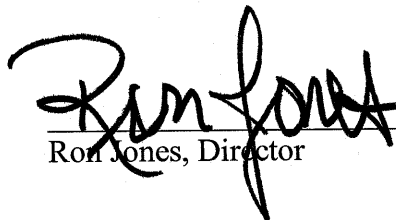
¹⁵ Transcript of Proceeding, Aug. 7, 2002, v. II, pp. 63-64 (Authority Conference).

case, the Consumer Advocate and CLEC Coalition repeatedly opposed allowing the Welcoming Reward Program to go into effect.¹⁶

In addition to my disagreement with the specific grounds provided by the majority, I must also dissent because I believe the arguments presented during the conference indicated that there were numerous issues in this docket and that further consideration should be given to those issues before allowing the tariff to go into effect, particularly given that no decision had been made as to whether to convene a contested case. Additionally, BellSouth did not argue that it would be harmed if the tariff were not made effective on February 3, 2003. BellSouth simply insisted that the Authority allow BellSouth to offer the program.

Lastly, I am concerned that the majority's decision will create a precedent for the next tariff that comes along. In order to avoid the need to reverse harmful effects, it is important that this agency consider each tariff independently and not adopt a policy of allowing tariffs to go into effect without regard to the complaints of individuals or entities.

For the foregoing reasons, I respectfully dissent from the majority's decision to allow the Tariff to Introduce Welcoming Reward Program to go into effect as modified. This decision should not be construed, however, as favoring denial of the tariff. It may be that further analysis of the issues will indicate that the tariff as revised is legal.¹⁷ On February 3, 2003, though, that decision was premature.


Ron Jones, Director

¹⁶ *Id.*, Feb. 3, 2003, pp. 71-72, 86-87 (unsigned version) (Authority Conference, Docket No. 03-00060).

¹⁷ In fact, had the panel voted to consider in a contested case proceeding the tariff as filed rather than the majority voting to revise the tariff and allow it to go into effect, it may have been that the panel would have concluded that the tariff as filed on June 7, 2003 was legal.